

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Requirement Under
Minnesota Statutes 216B.1691, Subdivision 6
(c) for Northern States Power Company d/b/a
Xcel Energy to Enter into a Purchased Power
Agreement

ISSUE DATE: November 4, 2004

DOCKET NO. E-002/CI-03-2044

ORDER REQUIRING SUBMISSION OF
PROPOSED PURCHASED POWER
AGREEMENT

PROCEDURAL HISTORY

In 2001, the Minnesota Legislature amended Minn. Stat. § 216B.2424 to add new biomass-generation requirements to those already in place for Xcel Energy in its capacity as the owner of the Prairie Island nuclear plant. These new requirements included a requirement that the Company “accept and consider on an equal basis with other biomass proposals” a purchased power proposal from a ten- to 20-megawatt generating facility fired by residue wood, sawdust, bark, chipped wood, or brush and located within a narrowly defined geographic area in northern Minnesota.¹ The only generating facility meeting that statutory description appears to be one proposed by Itasca Power Company (Itasca).

In 2003, the Legislature strengthened this requirement by including the following language among several amendments to the renewable energy objectives statute:

(c) Also as part of its good faith effort under this section, the utility that owns a nuclear generation facility is to enter into a power purchase agreement by January 1, 2004, for ten to 20 megawatts of biomass energy and capacity at an all-inclusive price not to exceed \$55 per megawatt-hour, for a project described in section 216B.2424, subdivision 5, paragraph (e), clause (2). The project must be operational and producing energy by June 30, 2005.²

Despite this statutory requirement, Xcel and Itasca did not reach agreement on the terms of a purchased power agreement by the statutory deadline of January 1, 2004. On July 7, 2004, Itasca filed a letter claiming that Xcel had ceased to negotiate in good faith and asked the Commission to

¹ Minn. Stat. § 216B.2424, subd. 5 (e) (2).

² Minn. Stat. § 216B.1691, subd. 6 (c).

take action to move the negotiation process forward. Xcel filed a response claiming that it was negotiating in good faith but doubted that any resolution of the issues disputed between the parties was possible.

On August 13, 2004, the Commission issued an Order referring the matter to the Office of Administrative Hearings for mediation and urging the parties to participate in that process. On October 1, 2004, Administrative Law Judge Beverly Jones Heydinger filed her report on the mediation, stating that she had conducted three days of mediation, that both parties had participated in mediation, and that no resolution had been reached.

On October 28, 2004, the matter again came before the Commission. Both parties appeared, as did the Department of Commerce (the Department). In brief, Itasca argued that Xcel refused to negotiate in good faith, and Xcel argued that Itasca lacked the ability to enter into a commercially reasonable contract.

The Department stated that it would be extremely difficult, time-consuming, and resource-intensive to reach an informed judgment on the merits of the parties' claims and that jurisdictional and practical obstacles would likely prevent the Commission from resolving the dispute even if it reached the merits. The Department therefore recommended closing the docket and stating that the Commission made no finding on whether Xcel's conduct toward Itasca constituted a "good faith effort" under Minn. Stat. § 216B.1691, subd. 6.

In the alternative, the Department recommended that the Commission direct Xcel to make its best effort to craft a commercially reasonable purchased power agreement that complies with the statute, to file that agreement, and to offer the agreement to Itasca. This filing would both carry the potential for resolving the dispute and provide a baseline factual record on the issues dividing the parties.

FINDINGS AND CONCLUSIONS

The Commission concurs with the Department that, while its legal and practical ability to resolve this dispute is severely limited, it is reasonable to exercise the authority that it does have in a final attempt to facilitate statutory compliance. While the Commission has no authority over Itasca, it has plenary authority over Xcel. It is clearly reasonable to use that authority to spur statutory compliance if that is possible and to illuminate the obstacles to statutory compliance if that is not possible.

The Commission will therefore require Xcel to make its best effort to craft a purchased power agreement that complies with the statute, protects the interests of ratepayers, and meets acceptable standards of commercial reasonableness. The Company will file this agreement and serve it on Itasca. The Department will file comments on any issues that it believes require Commission attention within 30 days of the filing. Itasca will be asked to accept or reject the agreement within 90 days of receiving it. If Itasca does not file notice that it accepts the agreement within 90 days of receiving it, the Commission will assume that the agreement has been rejected and close this docket.

The Commission will so order.

ORDER

1. On or before November 30, 2004, Xcel shall file with the Commission and serve on Itasca Power Company a proposed purchased power agreement that represents its best effort to (a) comply with Minn. Stat § 216B.1691, subd. 6; (b) protect ratepayer interests; and (c) meet acceptable standards of commercial reasonableness. The Company shall also file proof of service of the proposed agreement on Itasca.
2. The Commission asks the Department of Commerce to file comments within 30 days of the filing required in paragraph 1 on any issues relating to the proposed agreement that the agency believes require Commission attention.
3. The Commission asks Itasca to accept or reject the proposed agreement within 90 days of receiving it and to notify the Commission of its acceptance or rejection.
4. If Itasca does not notify the Commission of its acceptance or rejection of the proposed agreement within 90 days of receiving it, the Commission will presume that Itasca has rejected it and will close this docket.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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